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OVIDE MERCREDI: OU L'ART DE CREUSER SA PROPRE TOMBE

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Par Martin-Pierre Boulianne, BCL I

Cette semaine de la Saint-Valentin 1992 n'aura certainement pas été marquée par la réconciliation entre Blancs et Amérindiens; elle aura plutôt contribué à plonger ces deux solitudes dans un cul-de-sac de plus en plus profond, les rapprochant davantage du divorce.

Les crises amérindiennes de Kanesatake et de Kahnawake n'ont certes pas contribué à redorer l'image des Amérindiens auprès des Québécois. Cet été de 1990 a laissé à ces derniers un goût très amer, surtout si on y ajoute l'échec de l'accord du lac Meech provoqué en partie par le député autochtone Elijah Harper. On persista, malgré tout, à faire appel au

calme et la tolérance car, en définitive, les Amérindiens méritaient sans doute réparation pour toutes les injustices dont ils furent victimes au fil des époques.

Toutefois, la dernière frasque du chef des Premières nations, Ovide Mercredi, a rompu l'équilibre. Les propos qu'il a tenus lors de la conférence constitutionnelle de Toronto et lors de la commission parlementaire à Québec ont mis le feu aux poudres. De manière insultante et outrancière, il a ni plus ni moins refusé aux Québécois ce droit à l'autodétermination et cette caractéristique de peuple que lui-même réclame au nom des nations amérindiennes.

Le problème de telles déclarations, c'est qu'elles contribuent à élargir le fossé entre Amérindiens et Blancs et qu'elles risquent de conduire, non pas à une simple impasse, mais bien à une véritable guerre raciale entre deux minorités: les Amérindiens et les Québécois. D'ailleurs, dans un récent éditorial, Claude Masson («Blancs et Indiens: attention à la guerre raciale» *La Presse* [de Montréal] (13 février 1992) Cahier B à la p.2) résumait de façon éloquente l'opinion que le Québécois moyen est en train de se forger:

«À bien y penser, les Blancs devraient accepter de céder le territoire québécois aux Indiens pour occuper ensuite leurs réserves.

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NOTE-WRITING: THE FORGOTTEN ART

By some Law-Journal People

(Jean-Paul Poitras, Matt Taylor & Sivan Fox)

Are you interested in doing an independent research project but still searching for a compelling topic? Are you tempted by the team-oriented work of the McGill Law Journal but deterred by the two-year commitment or the strictly editorial nature of the work? If so, we have a project for the 1992-93 year which may interest you.

The McGill Law Journal and the Faculty of Law are looking for a team of 5 students to research and write a «Note» to be submitted to the Law Journal for publication in the fourth issue of Volume 38. Modelled on the student-written «Notes» published in the Harvard Law Review, the Note will be an in-depth study of a single topic presented in an article of 75-150 Journal-size pages. This will be an intensive project and students will need to work as a team in planning, organizing and developing the paper while, at the same time, researching a portion of the paper on their own. Cont'd on p.3

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ANNOUNCEMENTS - ANNONCES



Fall 1991 - 92 Term Papers and Essays - S.A.O. still has a lot of unclaimed term papers and essays from the Fall. To save us the trouble of archiving them, please pick yours up before the end of this week. **They will NOT be mailed out.** This notice does not apply to those hapless souls who wrote papers for Prof. Cotler (Civil Liberties), Prof. Janda (Business Associations), Prof. Malaurie, Prof. Johnson or Prof. H.P. Glenn.

Position of Tutorial Leader, Legal Methodology Programme - Students who are interested in applying for a position of tutorial leader with the Legal Methodology Programme for the 1992-93 academic year are requested to pick up

and fill out an application form at the Student Affairs Office. These forms should be returned to the SAO no later than Friday, March 13. Students who wish to obtain further information about the tutorial programme and the credits awarded are asked to see Prof. Patrick Healy, the current Director of the Legal Methodology Programme, or Julia E. Hanigsberg, the current Assistant to the Director (1st-year programme).

Position of Assistant to the Director, Second-Year Methodology Programme - Students who are interested in applying for the position of Assistant to the Director, Second-Year Legal Methodology Programme for the academic year 1992-93 are requested to submit an application letter along with a curriculum vitae to Prof. Patrick Healy no later than Friday, March 13. Students who wish to obtain further information about the position should contact Prof. Patrick Healy or Marvin Shahin, who currently holds the position.

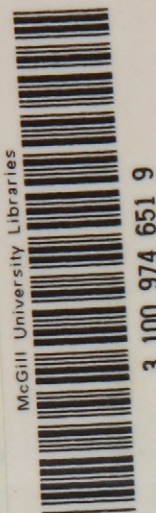
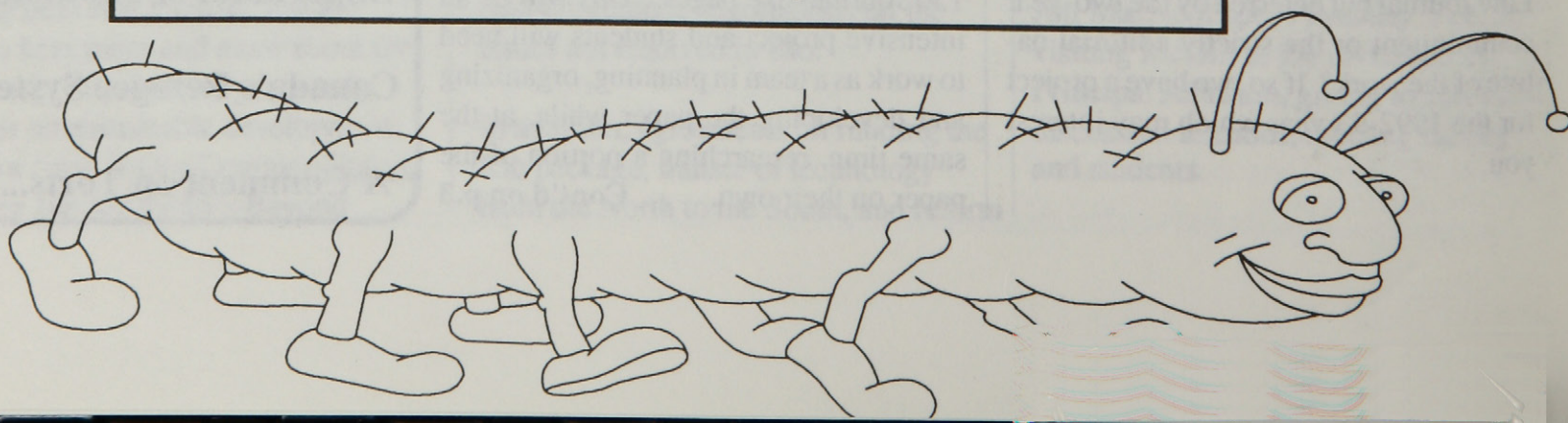
Position of Assistant to the Director, First-Year Legal Methodology Programme - Students who are interested in applying for the position of Assistant to the Director of the First Year Legal Methodology Programme for the 1992-93 academic year are requested to submit an application letter along with a curriculum vitae to Prof. Patrick Healy no later than Friday, March 13. Students who wish to obtain further information about the position should contact Prof. Healy or Julia E. Hanigsberg, who currently holds the position.

Legal Theory Workshop - On Friday March 6th at 12h00 in room 202, Prof. Richard Winfield (Georgia) will give a talk on the topic of: «The Rule of Law, Political Theory».

EDITORIAL NOTE

The Valentine issue of the Quid raises some serious questions about the nature of law school education, which must be addressed....NOW! It is apparent, given the 18 pages of lust in that issue — the largest issue ever — that law school and sex are more closely related than is now generally thought by most legal philosophers. Law school is not about

contracts and torts and maybe not about property. What it really comes down to is the unashamed pursuit of sex, titillation and cheap relationships. Who would have thought that Obligations I is really a cut rate dating service? What does lien de droit really mean? And what about seizin and servitudes? These questions must be answered. Please send your thoughts to the Editorial Board, with a brief description of yourself and a colour photo.



Ovide Mercredi... suite de la page 1

Ainsi, les Blancs bénéficieraient d'un boni de 300 \$ d'Hydro-Québec; ils auraient droit à des programmes de soutien financier très généreux dans l'ensemble du réseau de l'Éducation; ils pourraient boire et fumer à peu de frais; ils pourraient pêcher et chasser librement; ils recevraient de généreuses subventions pour contester les projets et décisions des gouvernements comme Grande-Baleine; leur pleine sécurité serait assurée aux entrées et aux sorties des réserves par les barricades érigées; ils n'auraient plus besoin de travailler et se laisseraient vivre par toutes sortes de programmes d'assurance-chômage et de bien-être social. La belle vie, quoi!»

Il est clair qu'un sérieux malaise est en train de s'enraciner très profondément au sein de nos mentalités. Ceci montre donc l'urgence d'en arriver à un dialogue civilisé et la nécessité, pour les Amérindiens, de cesser l'utilisation de la menace pour arriver à leurs fins. Il ne faut pas se leurrer: ce n'est pas par des actions similaires à celles d'Ovide Mercredi que nous trouverons une solution au problème car cela contribue à isoler davantage le peuple autochtone de ses alliés. De plus, ceci tend à diviser les Amérindiens entre eux puisque des groupes, comme celui des Inuits, commencent déjà à se dissocier des propos d'Ovide Mercredi. Chaque nouveau geste provocateur est un clou supplémentaire enfoncé dans le cercueil d'une possible entente.

En tant que collectivité, nous devons être prêts à admettre les erreurs passées et présentes de nos gouvernements en ce qui concerne les droits des Amérindiens. Toutefois, les leaders autochtones doivent également troquer leur attitude guerrière et provocatrice pour une autre plus civilisée et responsable permettant la discussion, car ce n'est que de cette façon que nous pourrions enfin fumer le calumet de paix. ■

Note-Writing... Cont'd from page 1

This is an ambitious project. If the team is to have the article published in the Journal, they must produce an article of academic quality. Thus, while two professors will be supervising the project, the responsibility for its outcome will fall squarely on the students. The exciting part of this project is the idea that a group of McGill students can work together to produce a piece of work that none could accomplish alone. The challenge will be to pull it off.

Are you interested?

This project is geared towards students who are interested in research and possess effective writing skills. Students must have the initiative to engage in independent research and thought and, at the same time, have the flexibility and willingness to participate in group discussions. Much of the project will require group organization, re-orientation of research, and coordination of written submissions. Perhaps most importantly, we are looking for students who are committed to the idea of this project and willing to go the extra mile to get it done. While participation in the project will entitle each student to 6 credits and satisfy the Faculty writing requirement, there are definitely easier ways to obtain 6 credits. The real reward flowing from this project will be the satisfaction of producing an article of publishable quality.

Topic for 1992-93:

The topic that has been chosen for the upcoming year is an analysis of the Young Offenders Act. The Young Offenders Act came into force in 1984 (replacing the Juvenile Delinquent Act) and has subsequently been the subject of much criticism, commentary and reform.

This is a topic that raises important theoretical and practical questions in many different areas of the law. Students with interests in criminal, family, constitutional, and administrative law will find this topic particularly interesting. Of course, an essential aspect of participating in this project will be helping to define its scope and direction. Ultimately, the bounds of the project will be defined by the imaginations of those involved.

Particulars:

This year, the project will be supervised by professors Healy and Harvison-Young. Besides serving an advisory role, professors Healy and Harvison-Young will grade the work of each student.

We are looking for 3 students to complete the 5-person research team. Officially, this project will be for the Fall and Winter terms of 1992-93, but students will be expected to begin independent research on the topic over the summer. This project will count as «term essay» credits for the Fall and Winter terms and will entitle the student to six (6) credits (3 credits per term) as well as satisfying the faculty writing requirement.

During the year, group meetings will be held weekly or bi-weekly and students will be expected to participate extensively in the research and writing of the paper.

For more information:

An information session concerning the details of the project will be held on March 9 at 12:00 in Room 203. During this meeting the application process and requirements will be discussed. Should you have any questions about the project, please feel free to contact the authors of this article at the Law Journal Office.

ON THE IMPORTANCE OF FOOTNOTES

By Paul Brown, LLB I

1 Do yourself a favour. Stop for a moment and consider footnotes (Yes, I am serious and yes, there is a point to this and no, you will not be chastised for being politically incorrect. This is merely an exercise in creative procrastination). If you were distracted by the parenthesis and didn't stop to think about footnotes, good — now think about footnotes. If you weren't, you aren't helping my argument at all, but please continue thinking about footnotes.

Have you ever thought about the purpose of footnotes? (Have you ever *cared*?) I'll bet that there is a significant percentage of readers (two out of the ten who have bothered reading this far) who would be making their elementary school teachers proud by thinking about references to other people's works to avoid plagiarizing (Good try pal...give yourself a zero for a boring answer).

Footnotes are designed to keep a written discussion flowing with a minimum of interference from pesky side issues that continually seem to want to work their way into its mainstream. The problem is that the sheer number of the thoughts, which on special occasions might actually be very important, tend to dam up the stream with their accumulated mass. As references also have this constipatory quality, convention has it that they are exiled to the footnote backwaters. This way, the writing's stream of consciousness is not impeded by citations which you might (or might not)

choose to look at as you please (Right about now the water metaphor is looking for a nice dry, warm and quiet place to go to sleep).

Forget about the references. Think once more about footnotes (you do have to be explicit with some linear readers). As I said, footnotes are actually for those pesky side issues (which seem to be closer to the centre than the side in my case). It was either Freud or Jung (I WAS a psychology major — emphasis on the tense) who described the secondary process (I think it was Jung actually) which is the subconscious thoughts and often (always in my case) makes it difficult to concentrate. To illustrate: you are in property class trying to concentrate on the substance of the lecture (just imagine that...) and questions about what you are going to have for dinner keep intruding into your mind after having made a brief stop for a conference with your stomach.

Those are the thoughts that are custom made for footnotes. You are in class taking notes about the rule against perpetuities and a grocery list just starts evolving on the bottom of your page (not a particularly wise thing to do is (a) you don't leave yourself much time to study for exams and just commit your class notes to memory in their entirety without processing their content for relevance or (b) you intend to use this list at the grocery store and must sort through ten pages of examples of the rule in the store before you find the one that tells you to buy three boxes of Kraft Dinner [sorry Pat]).

There are other problems with footnotes. The abstract nature of the thoughts that make it into footnotes creates donfusion for future readers who attempt to decipher the meaning of musings that are devoid of context. Those people that do dare put their secondary processes to paper are also often those who do not mind being misunderstood, labelled as «bizarre» or «psychotic» and do not mind getting free room and board in rooms that have a slightly rubberish smell (which is all right because you don't really smell it after a while.) I have been known to booby trap term papers with my secondary processes (which is acceptable in the psychology faculties if they are edited for taste and are short, and do not actually have to be to the point) as a way of releasing stress and getting revenge on professors. Among some gifted authors like Douglas Adams or Terry Pratchett, footnotes become art forms which are the funniest parts of their books.

Why am I writing about this? I lament the fact that footnotes are not put in the Quid Novi. I am not complaining because I understand the frustration that computers cause typesetters. Faced with this impossibility, writers must resort to parentheses to accomplish their task. What a sad alternative.

Parentheses are to footnotes what a pregnant pause is to maternity leave. Parentheses are confusing (come to that conclusion yet?) intrusive (see above comment) and mess up the sentences (ditto). With footnotes a writer can be self-indulgent and take the time to get everything down, yet be discreet about it.

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CANADA'S REFUGEE SYSTEM: INTO THE WASTEBASKET?

by Hanson Hosein, LLB III

Incident #1:

A young refugee claimant, who had allegedly had one testicle removed and was beaten while being held upside down and being burned with cigarettes, recounts his story of having hot boiled eggs placed under his arms during his torture.

Two inquisitors discuss the claimant's story.

A: «Boiled eggs under arms. Hard or soft boiled?»

B: «It must be the truth, no one could make up hard-boiled eggs. Soft conjures a worse picture to me - can you just feel the oozing yolk?»

Incident #2:

A Romanian refugee claimant testifies that her husband was hit by a truck on a construction site in an incident «orchestrated by the security forces to punish him for his participation in activities against the regime».

Two inquisitors discuss the claimant's story.

A: «[Former Romanian dictator] Ceausescu is not dead actually, he is driving a truck on a construction site.»

B: «Surely one can enjoy a little fantasy while listening to this crap.»

A: «Of course she has such a sweet smile.»

Does this sound like another case for Amnesty International of an authoritarian regime's barbarianism? Unfortunately not. Both of these incidents recently occurred before separate hearings of the Immigration and Refugee Board in Toronto while listening to refugee claim-

ants' testimonies. Notes written by members of the Board containing these comments were found by lawyers in the wastebaskets in the hearing rooms after the hearing. In addition to the passing of these notes by these members, there was also alleged giggling when details of torture were revealed, as well as evident lack of attention and sensitivity.

Having worked for credit for a very capable immigration lawyer this year under the Faculty's legal clinic program, I have had the opportunity to be exposed to the Canadian immigration and refugee process. And it has become painfully obvious, that similar to any other court system, there is a great deal of arbitrariness, bias and incompetence present.

It is clear that such behaviour is inexcusable. Permanent members of the Immigration and Refugee Board are appointed by the federal cabinet and are paid full-time salaries of between approximately \$71 000 to \$84 000. It is true that some participants in the immigration process eventually suffer from «compassion fatigue» after hearing countless cases (approximately 30 000 last year) of discrimination, torture and other hardships. It is also true that in an effort to take advantage of Canada's social welfare system, some refugee claimants lie about their situation. However, it is one thing to suffer from «compassion fatigue» and to make jokes in the privacy of your own office. It is another thing to show complete disrespect for a potentially legitimate claimant, who may have suffered at the hands of others or has a fear of persecution because of his/her race, religion, nationality, membership in a social group or political opinions.

Such behaviour is in direct contrast to some of the positive experiences that I have had with the refugee process. In one case that had reached the final level of appeal before being possibly taken to the Federal Court, a Peruvian woman and her

daughter were claiming refugee status on the basis of their political opinions. They lived in a part of the country where the Shining Path, a Maoist terrorist group, had a tight grip on the population. In an effort to indoctrinate the young, the Shining Path forced children to attend special classes. Failure to attend would result in threats, torture and ultimately death. These consequences would be directed against the members of the child's family. Neither the police nor the government was able to stop the Shining Path's activities.

To avoid such persecution, the woman and her daughter escaped to Canada. Before a two-member panel, the woman testified through a Spanish interpreter. One member of the panel was attentive, and asked several questions. The other merely leafed through the evidence, looked stern and asked one not-too-brilliant question. The testimony was consistent with prior attestations, and the claimant was eloquent, succinct and honest in her answers to questions. In the end, it was held that the claimant's fear of persecution was well-founded. The woman's sister who had come to Canada years ago and was in attendance at the hearing broke into tears of relief at the outcome. My own feeling overwhelmed me as I shared in the family's joy. The woman and her daughter had in effect, been given the chance to start a new life. They could put the years of misery and terror behind them. I felt grateful that we had such a generous system. Then I read about the two aforementioned incidents.

The source of the problem may lie in the structure of Canadian immigration law. A recent occurrence illustrates this point. In that case, two brothers, both refugee claimants in identical situations, testified separately. One panel ruled that one of the brothers' fear of persecution was

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A COMMENT ON TORTS

By Danièle MacKinnon, BCL II

I enjoy taking Torts I with Professor Somerville. What I enjoy less is sitting through lectures the atmosphere of which is both hostile and disrespectful. I am surprised and often embarrassed by the reaction of students to a person we are privileged to have as a professor. Because a lot of criticism is flying about, I'd like to list the reasons for which I appreciate Professor Somerville.

1. She is a world-renowned expert in the field of medical negligence law. Negligence is the bulk of tort law. You have to know your stuff to be an expert, and she does.
2. She brings us an outside perspective and shows us the *practical* implications of what we are learning, through the example of medical negligence law.
3. She doesn't spoonfeed us. Yes, her

course requires more individual work and preparation. Given that we are no longer in highschool and that our exams are open book, is this really so much to ask?

4. When answering questions and responding to comments she is positive and encouraging - she never makes anyone feel stupid.
5. She quickly identifies the analytical flaws which underly questions, pointing out where we have gone wrong, or that we are (mis-) applying civil law concepts.
6. She is enthusiastic, lively and witty.
7. I personally am not unduly distressed that she is not correcting our exams. I have often found that my exam results are not particularly representative of my understanding of the course. In any case, if we are really surprised and unhappy with our results, we retain the option of consulting with

Professor Somerville.

8. As a professor, Margaret Somerville is an empowering image for women in the legal profession. Unlike some other women professors, she has not adopted a «*traditional male persona*» to enhance her authority. Nor does she seek to diminish her intellectual abilities (and appear less «*threatening*») by resorting to coyness or flirtation. She is comfortable both with her femininity and her exceptional talents.

I guess the bottom line is that whether or not you agree with me as to Margaret Somerville's abilities as a professor, nothing warrants disrespectful and hostile behaviour. It makes the class unpleasant both for the professor and for other students.

It's bad enough having to come to class at 8:30 in the morning - with less than half the classes remaining, could we please try a little respect.

Footnotes... Cont'd from page 4

Footnotes can do more. Self reference is no longer a chore but is now a reflex. Ever tried footnoting a footnote? Try doing that with parentheses for a day. With every footnote attached to a separate number, it is the abstract thinker's dream. Instant organization (now if I could ever get around to writing that case comment).

Think of footnotes as a sort of damage control for writers whose thought patterns fly much the same course as the infamous

bumble bee. They attenuate the extremes and remove them from the forefront in much the same way a conductor hides the would-be virtuoso tuba player to the back row after his song is over. The power to segregate (not a dirty word in this context) is profound as the footnote enables the writer to maintain his/her rhythm in a cacophony of thoughts.

I suppose that the biggest benefit of such footnotes is that they implicitly warn savvy readers that the writer's thoughts are slightly chaotic and that organization

will not be the topic of the writing. With this warning unleashed, all the world is fair game for the writer (yes yes, all is fair in love, war **and** when footnotes are present), and the readers have no right to complain about lucidity and the lack thereof in the writing.

Until the powers that be are able (if ever) to put footnotes into the Quid I guess I'll just resort to the lowly parenthesis to provide a modicum of organization to my babblings. For your sake. Not mine. (I understand myself just fine).

Refugee... Cont'd from page 5

reasonable, and he was consequently allowed to stay. The other panel came to the opposite conclusion. This inconsistency strikes a blow to the reliability of the system where the final decision seems to rely on the mercy of the panel members' discretion, and not on established systemic standards and thresholds.

The issue may also be more localized. The appointment procedure of the members of the Board may be flawed, in that they are all political appointees. Consequently, there may be some sort of patronage involved. More damaging however, is the potential for lack of competence, knowledge, and legal training that is required for such a position.

Given my limited experience in this field thus far, I do not feel capable of offering any further analysis or solutions. However, irrespective of what I know, based on what I have seen and heard, I do believe that Canada cannot afford to allow such disgraceful incidents to occur. To deny refugee claimants an unbiased, respectful and thorough audition is to promote a great injustice. And they deserve better.